

REMARKS

In the Office Action dated February 20, 2009, the following objection and rejections are present: claim 11 stands objected to due to informalities; claims 1-31 stand rejected under 35 U.S.C. § 103(a) over the McKissick reference (U.S. Patent Pub. 2007/0124795) in view of the Danker reference (U.S. Patent Pub. No. 2003/0208777) and further in view of Oshita (U.S. Patent No. 5,796,441). Applicant traverses all of the rejections and, unless explicitly stated by the Applicant, does not acquiesce to any objection, rejection or averment made in the Office Action.

Applicant respectfully traverses the § 103(a) rejections of claims 1-31 (each of which is based on the '795 reference) because the modification of the '795 reference proposed by the Examiner would change the principle of operation of the '795 reference. *See, e.g.*, M.P.E.P. § 2143.01 ("If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious. *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959)."). In this instance, the Examiner continues to mischaracterize the '795 reference as teaching broadcasting messages (received from users of set top boxes) to the set top boxes of the desired recipients of these messages. *See, e.g.*, pages 2-3 and 5 of the instant Office Action. Instead, the cited portions of the '795 reference teach that messages can be exchanged between the users of television equipment devices 100 and 120; the messages are stored on message servers 106, 108 or 110 and the recipients user's set top box downloads the message from the message server after logging on to the message server. *See, e.g.*, Figure 3 and Paragraphs 0077 and 0079. In other words, the '795 reference does not broadcast text messages to a plurality of destination set top boxes as in the claimed invention, but instead teaches that the set top boxes access messages stored on a server on an individual basis. The Examiner once again mischaracterizes the teachings of the '795 reference in the discussion regarding paragraph 0083 on page 2-3 of the instant Office Action. The '795 reference teaches providing "TV message information" with the television program data, not the actual messages that are exchanged by the users as erroneously asserted by the Examiner. The TV message information is taught by the '795 reference as being information "that indicates that the television program has associated message options such as those shown in FIG. 4." *See*

paragraph 0082. Thus, the '795 reference does not broadcast the actual messages with the television programming.

Now turning to the impropriety of the Examiner's proposed modification of the '795 reference, the Examiner proposes to modify the '795 reference such that the messages exchanged between users of set top boxes would be multiplexed with audio and video signals and broadcast over a network. *See, e.g.*, pages 5-6 of the instant Office Action. However, Applicant submits that such a modification would change the principle of operation of the '795 reference in that the messages would no longer be stored on a server to be accessed by the intended recipients on an individual basis. In other words, the Examiner is improperly modifying the '795 reference by replacing that which the invention is directed to (*i.e.*, the manner in which messages are exchanged between users of set top boxes). *See also, KSR Int'l Co. v. Teleflex, Inc.*, 127 S. Ct. 1727, 1742 (2007) (“[W]hen the prior art teaches away from combining certain known elements, discovery of a successful means of combining them is more likely to be non-obvious.”). Accordingly, there is no motivation for the skilled artisan to modify the '795 reference in the manner proposed by the Examiner.

In view of the above, the § 103(a) rejections of claims 1-31 are improper and Applicant requests that they be withdrawn.

Regarding the objection to claim 11, Applicant has amendment claim 11 to address the concern raised by the Examiner. Thus, Applicant requests that the objection to claim 11 be removed.

In view of the remarks above, Applicant believes that each of the rejections has been overcome and the application is in condition for allowance. Should there be any remaining issues that could be readily addressed over the telephone, the Examiner is asked to contact the agent overseeing the application file, David Cordeiro, of NXP Corporation at (408) 474-9068.

Please direct all correspondence to:

Corporate Patent Counsel
NXP Intellectual Property & Standards
1109 McKay Drive; Mail Stop SJ41
San Jose, CA 95131
CUSTOMER NO. 65913

By: 

Name: Robert J. Crawford
Reg. No.: 32,122
(NXPS.492PA)